

Date of decision: 9-7-1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or ..  
thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Mr.M.R.Anand, LGP with Mr.A.J.Desai, LAGP for the appellants

Mr.Nitin Amin, L.A. for the respondents.

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Coram: N.J.Pandya & A.R.Dave,JJ.

July 9, 1996

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ORAL JUDGMENT (Per N.J.Pandya,J.)

Acquisition for road was initiated in Dehgam Taluka by issuing Notification under Sec.4 on 4-11-1982 which resulted into an award dated 31-7-1984 by the Acquisition Officer whereby 80 paise per square metre

came to be awarded. Being aggrieved by this, Reference was made praying for Rs.10/- per square metre, which came to be allowed by the learned Extra Assistant Judge, Narol disposing of a group of matters by judgment dated 27-4-1987. For the entire group one witness alone was examined i.e. Mr.Rajnikantbhai at Exh.12. He has also relied on the previous award of nearby village Sametri Exh.14. However, the claimants have chosen the yield method and except for producing the said earlier award Exh.13, it has not been made use of or it could not be said that it was pressed into service for getting the market price ascertained. The award of the learned trial Judge therefore, is based entirely on yield message. For this purpose, discussion is to be found in paragraphs 9 & 10 of the judgment where the evidence of said witness has been summarised in detail and average gross income of Bajri crop per Bigha has been worked out to Rs.750/- and the highest priced crop taken for the purpose is veriali and there the gross income worked out is Rs.1600/-. Taking the total of the 2, i.e. Rs.2,350/- the learned Judge has proceeded to work out the market price which turns out 70 ps. per square metre. Giving multiple of 10, he has worked out the price to be Rs.7/- per square metre and because of the development that has taken place at nearby village, stating that this increases the potential of the land under acquisition before him, he has awarded Rs.2/- extra.

2. Obviously, the said extra amount of Rs.2/-awarded by the learned trial Judge is totally out of hand. Having adopted the yield method, the learned Judge ought to have concentrated only on that and after critically analysing the evidence produced before him, he should have come to a conclusion about the market price.

3. While doing that exercise and on going through the record, we find that village form no.7/12 produced in respect of the lands under acquisition clearly indicates that by and large the cropping pattern was single crop in a year. Further, the cropping pattern to be found is a particular crop may be Bajri, may be paddy, may be ground-nut and very rarely and that too in few cases, mixed crop pattern is to be found.

4. Under the circumstances, in our opinion, the average of Rs.2350/- should be halved and taking average of Rs.1150/-, market price should be worked out. This will take care of the fertility of land, its under utilisation and may be even potential because the nearby lands did give crops like paddy, groundnut and therefore with little improvement and labour, there was a

possibility of improving the yield or the crop of other land also.

5. On this basis, taking per bigha yield of Rs.1150/- its square metre value is sought to be worked out by applying 2300. It will work out to Rs.5/- per square metre. This would mean that we have kept the multiple given by the trial Court as it is. We have done so as per the Supreme Court pronouncement in this regard.

6. The net result is that, the appeals are required to be allowed partly. The market price of Rs.7/- is reduced to Rs.5/- striking down the additional amount of Rs.2/-given by the trial Court and the award of the trial Court is therefore, modified to that extent. The rest of the award of the trial Court as to solatium, interest etc. will remain as it is. The amount to be worked out on the basis of the aforesaid modification to be deposited in the trial Court, if not already deposited, within six weeks from today. If the amount is already deposited, the amount deposited in excess shall be refunded to the appellant State on pro-rata basis and the remaining amount shall be paid to the claimants and if they are already paid, it shall remain with them. The appeals are partly allowed accordingly with no order as to costs.

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